

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

KENNETH TRAYLOR

PETITIONER

V.

CIVIL ACTION NO.1:06CV72-MPM-JAD

RON KING, et al

RESPONDENTS

REPORT AND RECOMMENDATION

The undersigned has considered the respondents' motion to dismiss the petition for failure to exhaust his state remedies.

The petitioner was represented by retained counsel at his state court trial. He noticed his appeal, *pro se*, after which his counsel was allowed to withdraw. He requested leave to proceed *in forma pauperis* before the trial court and with the Mississippi Court of Appeals. Because he failed to present any proof of indigence, his motions were denied. His motion to reassign his case to the Mississippi Supreme Court for determination of his right to proceed *in forma pauperis* was denied as not properly before that court. When he failed to pay his appeal costs, even after the issuance of a deficiency notice, his direct appeal was dismissed. He has not attempted to reinstate his direct appeal and has made no application for post-conviction relief in the state courts.

The petitioner has not exhausted his remedies in the state courts. The undersigned recommends that the petition be dismissed without prejudice pursuant to 28 U.S.C. § 2254(b)(1)(A).

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.2(D) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten

days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Petitioner is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Petitioner is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 3rd day of May, 2006.

/s/ JERRY A. DAVIS  
UNITED STATES MAGISTRATE JUDGE